

**REDACTED VERSION
PURSUANT TO 35-A M.R.S.A. § 704(5)**

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-764

March 4, 2003

[CUSTOMER]

ORDER ON APPEAL

Appeal of Consumer Assistance Division
Decision # 2002-13189 Regarding 1Com, Inc.

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we remand the appeal of 1Com, Inc. (1Com) to the Consumer Assistance Division (CAD) to establish a past due amount for **[Customer]** to pay 1Com for services received between November 2000 and June 2002, as described in this Order.

II. BACKGROUND

On June 20, 2002, Ms. Nicole Gray complained to CAD that her local and long distance service on two accounts, one residential and one business, had been switched to 1Com without her authorization. CAD investigated the matter. 1Com claimed she authorized the change in November 2000 but was unable to provide the tape from its Third Party Verifier (TPV) to verify the authorization.

CAD issued its decision on November 22, 2002 finding that because 1Com was unable to provide proof that the switch was authorized, **[Customer]** was not liable for the charges from 1Com for either her business account or residential account. It required 1Com to credit her accounts for all unpaid charges. It further found she was not liable for calls made during the first 30 days of service from 1Com, and it authorized the carriers providing service prior to the unauthorized change to bill **[Customer]** at rates she was receiving before the unauthorized change. Her business account was with Verizon for basic service and Vartec for intrastate at interstate toll service. The residential account for basic service and intrastate toll service was with Verizon, and interstate toll was with MCI.

On December 2, 2002, 1Com appealed the decision to the Commission. It claims that **[Customer]** authorized the changes even though it no longer has tapes from the TPV and this is evidenced by the fact that she twice attempted to enter into payment arrangements for past due amounts. It further claims that it is only required to keep the TPV for two years pursuant to Chapter 296 § 3(B)(2). It also claims that the CAD required it to provide telephone service to **[Customer]** and suspend collection activities for six months while the appeal was pending.

III. DISCUSSION

This case presents an unusual set of circumstances not seen in a typical “slamming” case. **[Customer]** did not contact CAD until June 2002 with her claim that her interstate and intrastate service carriers had been changed without her permission even though the changes occurred in November 2000, 19 months earlier. A customer would typically notice that he/she was being billed by a different carrier soon after the change occurred. **[Customer]** claimed she thought the mailings she received from 1Com were advertisements, not bills, and she threw them away. However, she did not explain why she did not receive bills from her former carriers during that period. This should have been particularly obvious since she ran a business that involves telephone use. In addition, 1Com customer logs indicate 1Com spoke with **[Customer]** on September 7, 2001 and June 20, 2002 to attempt to make payment arrangements. **[Customer]** had made no payments since the accounts were established in November 2000. As of July 2002, she owed 1Com a total of \$2,608.75 on both accounts.

IV. DECISION

1Com handled **[Customer’s]** accounts in a manner that caused it some of the resulting problems. First, it is unclear why it did not begin collection activities/disconnection procedures after a few months when no payments were received. This surely would have alerted **[Customer]** to problems with the accounts. Instead, contacts appear to have been sporadic at best. Second, 1Com instituted a PIC Freeze on her long distance service on her business account in May 2001, nominally for **[Customer’s]** and its protection. When CAD inquired about this in June 2002, 1Com refused to lift the long distance freeze unless it received a request from the Commission in writing. Such a requirement is inconsistent with the Commission’s rules. There is nothing in the record to indicate that CAD required 1Com to maintain **[Customer]** as a customer during the pendency of the appeal as claimed by 1Com.

Finally, 1Com failed to maintain the Third Party Verification records to prove that **[Customer]** authorized the change. 1Com correctly asserts that it is only required to maintain the records for two years. However, CAD requested the verification on August 13, 2002, within the two-year period and 1Com was unable to produce these. Counsel for 1Com admitted on August 30, 2002 that the Third Party Verifier had lost the records and they no longer relied on telephone verifications and instead required authorization in writing.

The passage of time certainly results in difficulty in determining whether **[Customer]** in fact authorized 1Com as her carrier over two years ago. Her failure to pay anything for service for 18 months to any carrier, however, places **[Customer’s]** account of the facts in doubt. 1Com’s inability to provide verification likewise places its account of events in question.

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We believe the soundest decision would return both parties to a position as if the switch had not occurred.¹ It is reasonable that 1Com be reimbursed for the calls it carried, not to exceed the amount **[Customer]** would have paid to her original carriers or the amount 1Com charged her during this period, whichever is lower. It is also reasonable to require **[Customer]** to pay this amount. Therefore, we remand the case back to CAD to determine these charges. 1Com and **[Customer]** should enter into a reasonable payment arrangement for the amount, if **[Customer]** is not able to pay the total amount.

Dated at Augusta, Maine, this 4th day of March, 2003.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

¹ We note that CAD only notified Verizon that it was authorized to charge **[Customer]** for the period of the switch. CAD has confirmed that Verizon has taken no action to collect such charges (and did not intend to do so).

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NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.